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GOOGLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No. 3:10-cv-03561 WHA

**GOOGLE'S STATEMENT REGARDING
TRIAL EXHIBIT 610.1**

Dept.: Courtroom 8, 19th Floor
Judge: Hon. William Alsup

I. The trial record contains no evidence about the meaning of the term “Specification” in TX 610.1, other than the implied definition in its title.

The Court has asked about the term “Specification,” and specifically about whether the term “Specification,” as used in TX 610.1, is defined. *See* RT 2672:3-12. Other than the implied definition at the top of the document, which suggests that the term “Specification” means either “Specification: JAVA 2 PLATFORM STANDARD EDITION DEVELOPMENT KIT 5.0 Specification” or perhaps “JAVA 2 PLATFORM STANDARD EDITION DEVELOPMENT KIT 5.0 Specification,” there is no definition of the term “Specification” in the document itself.

The title indicates that the “Specification” that is referred to throughout TX 610.1 is the specification for the J2SE *Development Kit*—which would include not only API packages but also a virtual machine, a compiler and the other elements of the development environment, including a runtime. This definition would be consistent with and would help explain the inclusion in the agreement of not only a copyright license but also a patent license (*see* TX 610.1 (second paragraph) (referring to “any applicable copyrights or patent rights”)).

The trial testimony about this document does not suggest a better or different definition. Mr. Kurian identified this exhibit as a “specification license” for the “Java 2 Platform Standard Edition *Development Kit* 5.0 specification.” RT 370:10-17 (emphasis added). He testified to his understanding of the rights granted to and obligations accepted by licensees, but did not define the “specification” to which the rights and obligations pertain. *See* RT 371:7-381:25. Mr. McNealy also testified about TX 610.1, claiming that it “looks like” a license to “use the Java 2 Standard Edition *development* specification.” RT 2052:6-22 (emphasis added). He testified about his understanding of what a “specification” is, but did not further explain what particular specification is being referenced in the exhibit. *See* RT 2052:23-2053:16. In fact, Mr. McNealy testified that he was “not quite sure specifically” to what TX 610.1 pertained. *See* RT 2053:17-2054:10. He then testified only to his general understanding of specification licenses at Sun, and not about TX 610.1 in particular. RT 2054:21-2056:13. There is no other testimony in the record about TX 610.1.

II. The evidence in the trial record about TX 610.2 suggests that the term “Specification” in TX 610.1 refers to the specification for the entire development kit, not just the APIs.

Dr. Reinhold testified that TX 610.2 is “a DVD containing an electronic copy of the Java 5—the JDK documentation.” RT 672:16-18. He further testified that the DVD “includes the API specification for Java 5,” RT 682:18-19, but did not testify that the DVD is *limited* to the API specification. Mr. Lee, Professor Mitchell, Mr. Bornstein and Professor Astrachan were also questioned about TX 610.2 RT 1168:21-1176:3 (Lee); RT 1247:1-1253:25, 2279:13-2280:6 (Mitchell); RT 1836:15-1839:8 (Bornstein); RT 2217:19-2221:10 (Astrachan). None of these witnesses were asked any questions about any license pertaining to the material in TX 610.2.

Trial Exhibit 610.2 contains over 200 megabytes of data, including information and documentation about the Java language, the Java virtual machine, development tools such as the Java Virtual Machine Tool Interface, the Java Platform Debugger Architecture, the Java compiler and the Javadoc Tool. *See* TX 610.2. In short, as suggested above, the term “Specification” as used in TX 610.1 appears to refer to documentation for far more than just the 166 J2SE API packages. Finally, the more than 200 megabytes of data in TX 610.2 includes a file named “/docs/relnotes/license.html,” which appears to be the same as TX 610.1. However, there is no testimony in the record about this electronic file, and thus no evidence that the license pertains to anything other than the entirety of the materials that comprise TX 610.2.

III. There is no evidence that anyone at Google ever saw the Sun “specification license.”

As noted above, only two witnesses—Messrs. Kurian and McNealy—were questioned about TX 610.1. Neither of them is or was a Google employee. Two former Google employees, Messrs. Lee and Bornstein, were questioned about TX 610.2, but neither was asked whether he had ever seen the license file that is part of that exhibit. Two Google witnesses were asked about specification licenses generally: Mr. Bloch testified that he didn’t “know what a specification license is,” and Dr. Schmidt was also unfamiliar with the term. RT 829:1 (Bloch); RT 1558:25-1559:4 (Schmidt) (“Q. Do you know whether or not—you know that one of the kinds of licenses that Sun offered was a specification license; did you know that? A. Again, I’m not familiar with the specific Sun licenses that were available.”). In short, there is *no evidence* that anyone at

1 Google ever saw TX 610.1.¹

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3 Dated: May 2, 2012

KEKER & VAN NEST LLP

4 By: /s/ Robert A. Van Nest
5 ROBERT A. VAN NEST

6 Attorneys for Defendant
7 GOOGLE INC.
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23 ¹ Mr. Cizek did identify a “Sun Community Source License” entered into between Sun and
24 Danger. *See* RT 1061:3-8. The document was signed on behalf of Danger by Henry Nothhart.
25 *See* TX 1026 at 15. There was no testimony that any Danger employee who later became a
26 Google employee ever saw this document. The document is very different from TX 610.1.
27 *Compare* TX 1026 with TX 610.1. Finally, although TX 1026 does include the term
28 “Specifications,” that term is defined to mean “specifications for the Technology and other
documentation, as designated on the Technology Download Site” TX 1026 at 18.
Technology, in turn, is defined to mean “Java 2 Micro Edition” (i.e., not the Java 2 Standard
Edition that is referenced in TX 610.1). *See id.* at 18, 19. Thus, even assuming former Danger
employees who now are at Google ever saw TX 1026—and there is no evidence to support such
an assumption—that has no bearing on the meaning or possible relevance of TX 610.1.